IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	
	)	No. 63231-1-I
Respondent,	)	
	)	DIVISION ONE
v.	)	
	)	UNPUBLISHED OPINION
CARL SCOTT CHANEY,	)	
	)	
Appellant	)	FILED: April 12, 2010

Grosse, J. — Carl Chaney appeals from an order imposing 50 days jail time for willful violations of his community custody conditions. He contends that the trial court's refusal to continue the hearing so that he could obtain the results from his polygraph exam and subpoena the polygraph examiner as a witness violated his due process rights. Because the question presented is moot, we dismiss the appeal.

FACTS

In 2000, a jury convicted Carl Chaney of two counts of first degree incest for the sexual abuse of his teenage stepdaughter. He was sentenced to an exceptional sentence of 132 months of total confinement and 24 months of community placement, and was required to make payments on legal financial obligations (LFO). One condition of Chaney's community placement required him to undergo a sexual deviancy evaluation within 30 days of being placed on supervision. Additionally, unsupervised contact with minors was prohibited for 10 years. Chaney was also required to register as a sex offender.

Chaney was released from prison on January 29, 2007. In 2008, on three

separate occasions, Chaney's sentence was modified and the court imposed additional confinement for various and sundry violations.[1]

On February 18, 2009, Chaney's community corrections officer (CCO) filed a notice of violation of the conditions of supervision. The CCO's report detailed three violations: inappropriate contact with his minor child, failure to pay the LFOs, and failure to register as a sex offender. A hearing was held on March 5 and 11, 2009. Chaney represented himself with standby counsel. Before the hearing started, Chaney sought a continuance and requested that he be given access to the polygraph reports and that the polygraph examiner be called as a witness. After hearing argument, the court denied the request. The CCO and Chaney both testified.

Chaney's testimony essentially admitted each of the violations, but he offered explanations for why each violation should be considered exempt or de minimis. For example, he stated that he only contacted his daughter because he was worried about his son. He failed to register when he was living at a motel because he thought he was still considered homeless and could just report in each week as he had been doing.

During cross-examination, the prosecutor asked Chaney about the answers he had given to the polygraph examiner. Chaney objected and again asked that he be given the polygraph reports, and be allowed to call the polygraph examiner. The court again denied Chaney's request, stating that it was not relying on the polygraph

[1] April 8, 2008 - order modifying sentence and imposing 120 days for failing to pay legal financial obligations, to notify the Department of Corrections of change of address, to obtain sexual deviancy evaluation; August 15, 2008 - order modifying sentence and imposing 30 days additional time for failure to take polygraph examination in May 2008; November 24, 2008 - order modifying sentencing and imposing 120 days additional confinement for failing to take a polygraph, to obtain a sexual deviancy evaluation and for traveling in a restricted area against community correction officer's directives.

examination itself, only Chaney's responses in court. The court found Chaney willfully violated the conditions of the sentence and imposed 50 days confinement. The Department of Corrections (DOC) terminated its supervision of Chaney on September 26, 2009, when he was terminated from sex offender treatment. Chaney appeals.

ANALYSIS

The State contends that this appeal is moot because Chaney has already served the entire sanction and this court cannot provide any relief. "A case is moot if a court can no longer provide effective relief."[2] Chaney does not disagree that the case is moot, but argues that this court should address his challenge because it involves matters of continuing and substantial public interest.[3] When determining whether a case involves the requisite public interest, we consider "(1) 'the public or private nature of the question presented,' (2) 'the desirability of an authoritative determination [to provide] future guidance [to] public officers,' and (3) 'the likelihood of future recurrence of the question.'"[4]

Although questions regarding the propriety of sentence modifications are public in nature, here, the factual basis of the alleged error makes it unlikely that this specific question will recur. Chaney's allegations of due process violations do not withstand scrutiny. Moreover, in State v. Abd-Rahmaan, the Supreme Court addressed the level of due process rights afforded at sentence violation hearings, noting that such rights are not the same as those afforded at trial.[5] An offender has only minimal due process

[2] Orwick v. City of Seattle, 103 Wn.2d 249, 253, 692 P.2d 793 (1984).
[3] In re Pers. Restraint of Mines, 146 Wn.2d 279, 285, 45 P.3d 535 (2002).
[4] Mines, 146 Wn.2d at 285 (quoting Sorenson v. City of Bellingham, 80 Wn.2d 547, 558, 496 P.2d 512 (1972)).
[5] 154 Wn.2d 280, 289, 111 P.3d 1157 (2005).

rights in a sentence violation hearing.[6]

Here, Chaney was afforded notice of the three sentence violations alleged by the State: contact with a minor without permission, failure to properly register as a sex offender, and failure to pay the LFOs. Chaney admitted each violation. The results of the polygraph examinations were not presented as evidence of Chaney's violations and the court did not admit or view those results. The only evidence presented regarding the polygraph examinations occurred during the State's cross-examination of Chaney when it asked Chaney what he had told the polygraph examiner. The court specifically ruled that it was not considering the polygraph answers, but only the testimony Chaney offered in court.[7]

Chaney raises additional due process issues in his statement of additional grounds. Here, the evidence was overwhelming and undisputed that Chaney had committed each of the three violations. The court based its finding that the violations occurred on evidence independent of the polygraph examinations. Thus, the inclusion or exclusion of polygraph evidence was not an issue. None of the issues raised have merit or meet the criteria set forth for this court to consider a moot question. Under these circumstances, this matter is properly dismissed as moot.[8]

Dismissed.

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[6] State v. Dahl, 139 Wn.2d 678, 683, 990 P.2d 396 (1999).

[7] In any event, a party's own statements offered against a party do not constitute hearsay under ER 801(d)(2)(i); see State v. Badger, 64 Wn. App. 904, 908, 827 P.2d 318 (1992) (defendant's out-of-court statements contained in violation report do not constitute hearsay and admissible for substantive purposes pursuant to ER 801(d)(2)(i)).

[8] Generally, a case presenting a moot issue on appeal will be dismissed. City of Seattle v. Johnson, 58 Wn. App. 64, 66-67, 791 P.3d 266 (1990).

Grosse, J

WE CONCUR:

Lau, J.

Schindler, J